

STEPHANIE M. HINDS, United States Attorney (CABN 154284)
MICHELLE LO, Chief, Civil Division (NYBN 4325163)
GIOCONDA R. MOLINARI, Assistant United States Attorney (CABN 177726)

Attorneys for the United States of America

DIVISION

Defendant.

CONSENT DECREE BETWEEN THE UNITED STATES AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ON BEHALF OF THE UNIVERSITY OF CALIFORNIA AT BERKELEY

1 1. Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-
2 12134, and its implementing regulation, 28 C.F.R. part 35, require that no qualified individual with a
3 disability, by reason of such disability, be excluded from participation in or be denied the benefits of the
4 services, programs, or activities of a public entity, or be subjected to discrimination by a public entity.
5 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

6 2. The National Association of the Deaf (“NAD”), on behalf of its members, filed a
7 complaint with the U.S. Department of Justice’s Civil Rights Division, alleging that thousands of free
8 online courses, lectures, and other campus events in video and audio formats hosted by the University of
9 California at Berkeley were inaccessible to individuals who are deaf or hard of hearing, in violation of
10 Title II of the ADA. 42 U.S.C. § 12132. This included online content available to the general public on
11 a Massive Open Online Course (“MOOC”) platform, referred to as UC BerkeleyX, and the University of
12 California at Berkeley’s YouTube channels and iTunes University (“iTunes U”) platform.

13 3. The United States opened an investigation of the University of California at Berkeley in
14 2014. The United States investigated whether the University of California at Berkeley’s online content
15 is accessible to individuals with hearing, vision, and manual disabilities. The United States determined
16 that certain online content is not accessible to individuals with hearing, vision, and manual disabilities
17 and that the University of California at Berkeley therefore denies individuals with disabilities the full
18 and equal enjoyment of its services. The United States set forth its findings of fact and conclusions of
19 law in a Letter of Findings on August 30, 2016. On behalf of the University of California at Berkeley,
20 Defendant, The Regents of the University of California (“The Regents”), does not agree with the United
21 States’ findings of fact and conclusions of law and maintains that the University of California at
22 Berkeley has invested substantially in improving the accessibility of its online content.

23 4. On November 21, 2022, concurrent with the filing of this Consent Decree, the United
24 States filed a Complaint alleging that individuals with hearing, vision, and manual disabilities, including
25 individuals who use assistive technology (*e.g.*, screen reader), cannot equally access and enjoy the
26 benefits of UC Berkeley’s free online content.

entering into this Consent Decree, The Regents is not admitting any of the factual allegations or legal contentions raised in the United States' Complaint or its Letter of Findings, nor may this Consent Decree be asserted to have preclusive effect against The Regents in any litigation other than litigation by the United States to enforce the terms of this Consent Decree.

III. General Non-Discrimination Requirements

12. Pursuant to the terms of this Consent Decree, UC Berkeley:

- a. Shall not exclude qualified individuals with disabilities from participation in its services, or deny individuals with disabilities the benefits of its services. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
- b. Shall afford qualified individuals with disabilities an equal opportunity to participate in or benefit from any aid, benefit, or service provided to others. 28 C.F.R. § 35.130(b)(1).
- c. Shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1).
- d. Shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of its services, programs, or activities. 28 C.F.R. § 35.160(b)(1).
- e. Shall not utilize methods of administration that have the effect of defeating or substantially impairing accomplishment of UC Berkeley's objectives with respect to qualified individuals with disabilities. 28 C.F.R. § 35.130(b)(3)(ii).

IV. Definitions

13. The term "Berkeley Entities" (in the singular, "Berkeley Entity") means the central administration of UC Berkeley and any UC Berkeley school, college, department, program, or academic unit. Individual students and student groups are not Berkeley Entities.

14. The term "UC Berkeley platforms" means:

- a. UC Berkeley's MOOC platform referred to as UC BerkeleyX;
- b. UC Berkeley's website (<http://www.berkeley.edu/>) and any subdomain of www.berkeley.edu that may be accessed by the general public and that is controlled by a Berkeley Entity;

c. any podcast channel or account controlled by a Berkeley Entity that is hosted on a third-party platform, such as Apple Podcasts and Spotify, during the term of this Consent Decree; and

d. any other audio or video channel or account controlled by a Berkeley Entity that is hosted on a third-party platform, such as YouTube, during the term of this Consent Decree.

15. The term “Online Content” means all content created, developed, uploaded, or controlled by a Berkeley Entity, and made publicly available by a Berkeley Entity on any UC Berkeley Platform. “Online Content” includes content that is posted or uploaded on any UC Berkeley Platform by an individual faculty member acting within the scope of that faculty member’s employment. This includes faculty-created content on any UC Berkeley Platform related to courses, symposia, events, lectures, webinars, and podcasts.

16. The term “Audio and Video Content” means Online Content in audio or video format.

17. The term “Covered Individual” means an officer, employee, contractor, or other individual whose duties include uploading and managing Online Content on a UC Berkeley Platform on behalf of a Berkeley Entity.

V. Compliance With Title II of the ADA

18. **Web Accessibility Procedures:** Within four (4) months of the Effective Date, UC Berkeley shall adopt and implement updated Web Accessibility Procedures (“Procedures”). In accordance with Paragraph 36 of this Decree, the United States shall review and approve the Procedures for conformance with the provisions of this Paragraph. The Procedures shall:

- a. set forth required procedures for Covered Individuals to follow regarding the creation, development, and/or publication of Online Content;
- b. establish recommended guidelines and best practices for those who are members of the UC Berkeley community who are not otherwise Covered Individuals;
- c. require (for the Berkeley Entities and Covered Individuals) and encourage (for all other members of the UC Berkeley community) conformance to the Web Content Accessibility Guidelines (“WCAG”) 2.0, Level AA, as prescribed by the World Wide Web Consortium:

- i. If obtaining, developing, or publishing Online Content that conforms to WCAG 2.0 AA would fundamentally alter the nature of a UC Berkeley service, program, or activity, or would result in an undue financial and administrative burden, then the Procedures shall not require such conformance. The Procedures shall require, however, that where Online Content cannot be made to conform to WCAG 2.0 without causing a fundamental alteration or undue burden, that the Berkeley Entity and/or Covered Individual responsible for that content shall ensure that, to the maximum extent possible, qualified individuals with disabilities are able to access the substance of that content;
- ii. While the term “Online Content” does not include content controlled by a third party and not by a Berkeley Entity, the Procedures shall reflect that, when third party content is necessary to a publicly available service, program, or activity of UC Berkeley, the Berkeley Entities and Covered Individuals shall, to the maximum extent possible, use an accessible form of that third-party content when it is available; and
- iii. If Online Content is hosted on a third-party platform, and the content cannot be made compliant with WCAG 2.0 AA because of the technical limitations of the third-party platform, UC Berkeley shall not be responsible for those limitations and shall not be found to be in breach of this Consent Decree for that content. For example, YouTube does not currently support audio description; accordingly, UC Berkeley shall not be required to remediate or provide for audio description on any Online Content made available on YouTube channels that are considered UC Berkeley platforms, unless and until YouTube supports audio description, if that date occurs within the term of this Consent Decree;
- d. provide a procedure by which a member of the general public may request that Online Content not otherwise covered by Paragraph 19 be made accessible, as well as how UC Berkeley will investigate, respond to, and remediate any issues raised in such a request; and

- e. In addition, within thirty (30) calendar days of the date on which the Procedures are approved by the United States, UC Berkeley shall:
- i. distribute a digital or physical copy of the Procedures to all Covered Individuals, and once per year thereafter for the term of the Consent Decree;
 - ii. notify the UC Berkeley community of the Procedures, the responsibilities of all Covered Individuals, and the recommended guidelines and best practices for those who are members of the UC Berkeley community who are not otherwise Covered Individuals; and
 - iii. make the Procedures and a copy of the University of California Office of the President's Information Technology Accessibility Policy (ITAP) publicly available via a direct link on the footer of the www.berkeley.edu homepage, labeled "Accessibility." The Procedures, and a copy of the ITAP, shall also be made available on UC Berkeley's Disability Access and Compliance website at <https://dac.berkeley.edu/home> and UC Berkeley's Web Accessibility website at <https://webaccess.berkeley.edu/>.

19. **Web Accessibility Conformance Timeline:** UC Berkeley shall not deny individuals with disabilities the full and equal enjoyment of its Online Content,¹ including on UC Berkeley Platforms, according to the following timeline and requirements:

- a. **BerkeleyX:** Within nine (9) months of the Effective Date, UC Berkeley shall ensure that all Online Content, including audio and video content, on its BerkeleyX platform, as defined in Paragraph 14(a), conforms to WCAG 2.0, Level AA;
- b. **New Audio and Video Content:** Within nine (9) months of the Effective Date, UC Berkeley shall ensure that all Audio and Video Content on UC Berkeley Platforms included in Paragraph 14(b)-(d) created or made publicly available after the Effective Date conforms to WCAG 2.0, Level AA;

¹ Because color contrast cannot be remediated on pre-recorded video, UC Berkeley shall not be required to remediate color contrast on videos recorded before entry of this Consent Decree.

- 1 c. **Website Compliance:** Within eighteen (18) months of the Effective Date, UC Berkeley
 2 shall ensure that all Online Content on UC Berkeley’s website and subdomains, as
 3 defined in Paragraph 14(b), conforms to WCAG 2.0, Level AA. This shall not include
 4 Audio and Video Content on these platforms. Audio and Video Content created or made
 5 publicly available on these platforms after the Effective Date will be remediated pursuant
 6 to Paragraph 19(b), and existing Audio and Video Content on these platforms will be
 7 remediated pursuant to Paragraph 19(d);
- 8 d. **Existing Audio and Video Content:** Within thirty-six (36) months of the Effective
 9 Date, UC Berkeley shall ensure that:
- 10 i. all Audio and Video Content on UC Berkeley’s website and subdomains, as
 11 defined in Paragraph 14(b), that was made publicly available prior to the Effective
 12 Date conforms to WCAG 2.0, Level AA;
- 13 ii. all Audio and Video Content on UC Berkeley’s podcast platforms, as defined in
 14 Paragraph 14(c), that was made publicly available prior to the Effective Date
 15 conforms to WCAG 2.0, Level AA; and
- 16 iii. all other Audio and Video Content on UC Berkeley’s Platforms identified in
 17 Paragraph 14(d) that either (1) was created or made publicly available within the
 18 two (2) years preceding the Effective Date; or (2) has at least 750 views as of the
 19 Effective Date, to the extent that the number of views is ascertainable by a
 20 Covered Individual through the automated functions of the content management
 21 system or platform hosting the content, conforms to WCAG 2.0, Level AA.² If
 22 UC Berkeley verifies and memorializes that specific Audio or Video Content has
 23 fewer than 750 views as of the Effective Date and was created and uploaded more
 24 than two (2) years before the Effective Date, that content shall not be subject to
 25 this subparagraph even if it later reaches 750 views.

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 27
 28 ² For the avoidance of doubt, this does not pertain to any Online Content already included in Paragraph 19(a)-(d)(ii).

iv. Any Audio and Video Content not subject to Paragraph 19(d)(i)-(iii) may be made accessible through the public request process as outlined in Paragraph 21.

e. UC Berkeley shall not be responsible for remediating specific Online Content in circumstances where (1) no Covered Individual has the ability to access the system or platform on which the Online Content is hosted and effect the changes necessary to make that specific content accessible; or (2) no Covered Individual has access to the source file for the Online Content, and the source file is necessary to make the content accessible.

20. **Web Accessibility Coordinator**: Within sixty (60) calendar days of the Effective Date, UC Berkeley shall designate an employee as the Web Accessibility Coordinator for Online Content on UC Berkeley Platforms and provide the name of and contact information for that person to the United States. The Web Accessibility Coordinator:

- a. shall be knowledgeable about the terms of this Consent Decree, including, but not limited to, WCAG 2.0, Level AA and web accessibility generally;
- b. shall be responsible for overseeing, managing, and coordinating UC Berkeley's implementation of this Consent Decree and the Web Accessibility Procedures; and
- c. shall be responsible for tracking, reporting, and documenting that the requirements set forth in this Consent Decree have been met, and, if not, what requirements have not been satisfied, the reasons for any delays in meeting the requirements, and proposals for when the relevant requirements will be met. The Web Accessibility Coordinator shall be responsible for providing the reports set forth in Paragraph 25 below.

21. **Web Accessibility Feedback and Requests**: Throughout the term of this Consent Decree, UC Berkeley shall provide a notice, prominently and directly linked from the www.berkeley.edu homepage, from UC Berkeley's Disability Access and Compliance website at <https://dac.berkeley.edu/home>, and from UC Berkeley's Web Accessibility website at <https://webaccess.berkeley.edu/>. This notice will solicit feedback, complaints, and requests from visitors and users of UC Berkeley's Online Content of any accessibility barriers to the Online Content on UC Berkeley Platforms and, if applicable, what the visitors or users request in order to address the identified accessibility barriers. The link shall provide several methods to provide

1 feedback, including an accessible form to submit feedback and an email address to contact
2 representatives knowledgeable about ITAP and the Web Accessibility Procedures:

- 3 a. Upon receipt of feedback, a complaint, or a request that a specific item of Online Content
4 has one or more accessibility barriers that impede the requester's access to the content
5 and that should be removed, UC Berkeley will provide its initial response to the
6 feedback, complaint, or request within seven (7) calendar days of receipt, and will engage
7 with the requester on potential methods of removing the reported accessibility barrier;
- 8 b. UC Berkeley will address feedback, complaints, or requests within fourteen (14) calendar
9 days from when it received the feedback, complaint or request. If UC Berkeley requires
10 additional time to remove an identified accessibility barrier, UC Berkeley may take an
11 additional fourteen (14) calendar days to address the barrier; provided, however, that UC
12 Berkeley shall notify the requester of the additional time needed to remove the barrier,
13 and shall identify the number of instances for which such an extension is necessary in
14 accordance with Paragraph 25 below;
- 15 c. If UC Berkeley cannot or does not remove an accessibility barrier from a specific item of
16 Online Content in response to a request, UC Berkeley shall promptly notify the requester.
17 In addition, UC Berkeley shall (1) identify the number of instances in which an
18 accessibility barrier was not removed from a specific item of Online Content in response
19 to a request, and (2) provide explanations for each instance in which a barrier was not
20 removed, in accordance with Paragraph 25 below;
- 21 d. UC Berkeley will not be liable for a violation of this Consent Decree if, within twenty-
22 eight (28) calendar days of receiving information that a specific item of Online Content
23 has accessibility barriers that should be removed, it makes the content at issue accessible;
24 and
- 25 e. Whenever it is notified that a specific item of Online Content has accessibility barriers
26 that should be removed, UC Berkeley will engage in a good-faith effort to make the
27 content at issue accessible rather than remove the content from public access.
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1 22. **Web Accessibility Training:** Within sixty (60) calendar days of the United States' approval of
2 the Web Accessibility Procedures required pursuant to Paragraph 18, and at least once annually
3 thereafter for the term of this Consent Decree, UC Berkeley shall provide mandatory web
4 accessibility training to all Covered Individuals on how to comply with the Procedures.

5 23. **Web Accessibility Testing:**

6 a. For Online Content on BerkeleyX, as defined in Paragraph 14(a), UC Berkeley currently
7 conducts manual accessibility testing at least annually for all publicly available courses,
8 and any time a new course is made publicly available. UC Berkeley shall continue such
9 testing of all Online Content on this platform, at least as frequently, for the term of this
10 Consent Decree; and

11 b. For Online Content on UC Berkeley's websites and subdomains, as defined in Paragraph
12 14(b), UC Berkeley is currently engaged in yearly periodic, automated accessibility
13 testing to determine the conformance of its websites and Online Content with WCAG
14 2.0, Level AA. UC Berkeley shall continue such annual testing for the term of this
15 Consent Decree.

16 24. **External Auditing.** Within six (6) months of the Effective Date, UC Berkeley shall retain an
17 independent web accessibility services provider ("Auditor"), approved by the United States,
18 whose team includes individuals with disabilities who are experienced users of assistive
19 technology to conduct manual accessibility reviews throughout the term of this Consent Decree.
20 The Auditor shall have expertise in conducting manual (non-automated) accessibility reviews,
21 accessible web development, and WCAG 2.0 AA, and shall be knowledgeable about the terms of
22 this Consent Decree. The Auditor shall conduct manual accessibility reviews in accordance with
23 the following schedule:

24 a. Nine (9) months after the Effective Date: The Auditor shall assess the conformance of
25 Online Content subject to the requirements of Paragraphs 19(a) and 19(b);

26 b. Twenty-one (21) months after the Effective Date: The Auditor shall assess the
27 conformance of Online Content subject to the requirements of Paragraph 19(a), 19(b),
28 19(c), and 19(d);

- c. Thirty-three (33) months after the Effective Date: The Auditor shall assess the conformance of Online Content subject to the requirements of Paragraph 19(a), 19(b), 19(c), and 19(d);
- d. The Auditor's review shall be based on a sample of Online Content selected based on a methodology determined by the Auditor and will be based on the web accessibility testing results pursuant to Paragraph 23;
- e. The Auditor shall provide a copy of each of its final evaluations to the United States. The evaluations shall assess whether the Online Content reviewed complies with requirements of WCAG 2.0, Level AA and this Consent Decree, and shall make recommendations to address any barriers found in the accessibility of this Online Content; and
- f. UC Berkeley shall implement the recommendations contained in the Web Accessibility Evaluation within one-hundred and eighty (180) calendar days of receiving the Accessibility Evaluation. This shall not apply to Online Content subject to the requirements of Paragraph 19(d); UC Berkeley shall have the full 36-month period prescribed in Paragraph 19(d) to make such content accessible, even if recommendations regarding such content are made in the Web Accessibility Evaluation.

VI. Reporting, Enforcement, and Other Provisions

25. Within six (6) months of the Effective Date and every year thereafter, UC Berkeley shall provide the following information in electronic format to the Department of Justice:

- a. All reports created by the Web Accessibility Coordinator detailing UC Berkeley's compliance and any lack thereof with this Consent Decree pursuant to Paragraph 20(c);
- b. All testing reports created pursuant to Paragraph 23 and general information regarding the steps UC Berkeley has taken to resolve issues identified in such reports. If no action was taken in response to a specific issue, UC Berkeley shall include an explanation;
- c. All requests UC Berkeley received pursuant to Paragraph 21 and general information regarding the steps it took to investigate, resolve, and respond to the feedback, requests, notices, or complaints. If no action was taken in response to a specific issue, UC Berkeley shall include an explanation; and

d. General information regarding the steps UC Berkeley has taken to implement the recommendations in the Web Accessibility Evaluation pursuant to Paragraph 24(f). If no action was taken in response to a specific issue, UC Berkeley shall include an explanation.

26. Unless otherwise instructed by the United States, all notices and reports that UC Berkeley is required to send to counsel for the United States under this Consent Decree shall be sent electronically to: Charlotte Lanvers at charlotte.lanvers@usdoj.gov and Christine Kim at christine.kim@usdoj.gov. Unless otherwise instructed by UC Berkeley, all notices and reports that the United States is required to send to counsel for UC Berkeley under this Consent Decree shall be sent electronically to: Charles Robinson at Charles.Robinson@ucop.edu and David Robinson at dmrobinson@berkeley.edu.

27. The United States may review compliance with this Consent Decree at any time and may file a motion to enforce this Decree if it believes that the Decree, or any requirement thereof, has been violated, provided that it first gives notice of such a violation to UC Berkeley. The notice must provide sufficient specificity about the alleged violation so that UC Berkeley is readily able to identify and remedy the issue. UC Berkeley must respond to the United States as soon as practicable but no later than thirty (30) calendar days thereafter. This Decree is not violated if UC Berkeley remedies the alleged violation within forty-five (45) calendar days after receiving a sufficiently specific notice of the alleged violation. If UC Berkeley does not agree to remedy (or does not remedy) the issue within the 45-day period, the United States and UC Berkeley shall negotiate in an attempt to resolve any dispute relating thereto; if the parties are unable to reach a mutually acceptable resolution within twenty (20) calendar days, the United States may seek court enforcement of compliance with this Decree.

28. The Effective Date shall be the date that the Court enters the Consent Decree. Unless otherwise specified, all time periods designated for an action run from the Effective Date. This Decree shall remain in effect for three (3) years and six (6) months from the Effective Date.

29. This Consent Decree does not purport to remedy any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in above in Paragraphs 2-

1 3, nor does it affect UC Berkeley's continuing responsibility to comply with all provisions of the
2 ADA. Nor does this Consent Decree purport to bind or place any obligations on any University
3 of California campus other than the University of California at Berkeley.

4 30. This Consent Decree contains the entire agreement between the United States and The Regents
5 concerning the subject matter described in Paragraphs 2-3, and no other statement, promise, or
6 agreement, either written or oral, made by any party or agent of any party, that is not contained
7 in this Consent Decree, and concerns the subject matter described in Paragraphs 2-3, shall be
8 enforceable.

9 31. The time frame for completion of any act required by this Consent Decree may be modified with
10 the mutual written consent of the Parties, except that the termination date may only be extended
11 by Order of the Court. The United States will not unreasonably deny requested extensions, if
12 made by UC Berkeley in advance of any deadline, and following UC Berkeley's due diligence to
13 meet such a requirement.

14 32. If any provision of this Consent Decree is determined to be invalid, unenforceable, or otherwise
15 contrary to applicable law, such provision shall be deemed restated to reflect as nearly as
16 possible and to the fullest extent permitted by the applicable law and its original intent and shall
17 not, in any event, affect any other provisions, all of which shall remain valid and enforceable to
18 the fullest extent permitted by applicable law.

19 33. This Consent Decree shall be binding on UC Berkeley, and its subsidiaries, agents, employees,
20 officers, and contractors. In the event that UC Berkeley seeks to transfer or assign all or part of
21 its interest in any service covered by this Decree, and the successor or assign intends on carrying
22 on the same or similar use of the website or online services, then as a condition of transfer or
23 sale, UC Berkeley shall obtain the written accession of the successor or assign to any obligations
24 remaining under this Consent Decree for the remaining term of this Consent Decree.

25 34. Failure by the United States to seek enforcement of this Consent Decree pursuant to its terms
26 with respect to any instance or provision shall not be construed as a waiver to such enforcement
27 with regard to any instances or provisions.
28

1 35. The United States and UC Berkeley agree that, as of the date of entry of this Consent Decree,
2 litigation is not “reasonably foreseeable” concerning the matters described in Paragraphs 2-3. To
3 the extent that any of these parties previously implemented a litigation hold to preserve
4 documents, electronically stored information, or things related to the matters described in
5 Paragraphs 2-3, the party is no longer required to maintain such a litigation hold. Nothing in this
6 Paragraph relieves any party of any other obligations imposed by this Decree.

7 36. Procedure for Approval by U.S. of Specific Provisions: For provisions that require the approval
8 of the United States, UC Berkeley shall submit its proposal thirty (30) calendar days before the
9 deadline set forth in this Consent Decree. The United States shall timely respond to proposals
10 submitted by UC Berkeley and shall not unreasonably withhold approval.

11 37. The signatories represent that they have the authority to bind the respective parties identified
12 below to the terms of this Consent Decree.

1 DATED: November 21, 2022
2 STEPHANIE M. HINDS
3 United States Attorney
4 for the Northern District of California
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8 /s/ Gioconda R. Molinari
9 GIOCONDA R. MOLINARI
10 Assistant U.S. Attorney
11 450 Golden Gate Ave, Fl9
12 San Francisco, CA 94102-3419
13 Telephone: (415) 436-7220
14 Gioconda.Molinari@usdoj.gov
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Respectfully submitted,

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

REBECCA B. BOND
Chief

AMANDA MAISELS
Deputy Chief

/s/ Charlotte Lanvers
CHARLOTTE LANVERS
CHRISTINE KIM
Trial Attorneys
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – 4CON
Washington, DC 20530
202-305-0706 (telephone)
Charlotte.Lanvers@usdoj.gov

1 **FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

2
3 /s/ Kimberly Robinson

4 Kimberly A. Robinson

5 Principal Counsel, Litigation

6 University of California, Office of the President

7 Oakland, CA 94607

8 Telephone: (510) 587-6483

9 kimberly.a.robinson@ucop.edu

10 11/20/22

11 Date

12
13 **ORDER**

14 IT IS SO ORDERED this ____ day of ____, 2022.

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UNITED STATES DISTRICT COURT JUDGE